

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF PUBLIC ADVOCACY

P.O. Box 672, Somerset, Kentucky 42501

606-679-8323

September 25, 1989

George Hancock, Director
Kentucky Correctional Psychiatric
Center
P. O. Box 67
LaGrange, KY 40031

RE: Commonwealth vs. Frank Simpson, Jr.
Wayne Circuit Court
Indictment Nos. 89-CR-012, 89-CR-013

Dear Mr. Hancock,

Please consider this letter as a formal request for the Kentucky Correctional Psychiatric Center to assist the undersigned counsel in the evaluation of evidence pursuant to K.R.S. 31.185. "Any defending attorney operating under the provisions of this chapter is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order by the county." Our office is a full-time Public Defender office and a part of a state agency, the Department of Public Advocacy. We are representing Frank Simpson, Jr. on two Indictments now pending in Wayne Circuit Court. Our office having been appointed by Honorable Circuit Court Judge Philip R. Morgan due to Mr. Simpson's status as an indigent under K.R.S. Chapter 31. The Indictments, copies of which are enclosed, charge that Frank Simpson, Jr. committed the offenses of capital murder and attempted robbery on or about October 17th, 1988, by shooting Dorothy Wilson while attempting to commit a theft. A pretrial evaluation of the defendant, Frank Simpson, Jr., was performed at the Kentucky Correctional Psychiatric Center by Staff Psychiatrist Frank DeLand, M.D., pursuant to an Order issued by Wayne Circuit Judge Philip Morgan on April 20, 1989. That evaluation is dated September 20, 1989. My specific request is for Dr. DeLand or other qualified members of your staff to review a variety of materials and information concerning Mr. Simpson and specifically address several other issues concerning his competency and his mental health status. As

you know as one of Mr. Simpson's attorneys I am duty bound to explore and investigate many more issues concerning these matters than is the Circuit Judge whose responsibility is limited to the narrow issue of competency to stand trial. Virtually all of the material we want considered has already been forwarded to your staff. After a thorough examination of the records, we would hope to have the doctor who reviewed them report to us concerning these and other matters:

1) At the time of the offense, was the defendant acting under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be (KRS 507.020);

2) At the time of the offense, was the defendant under the influence of extreme mental or emotional disturbance even though the influence of extreme emotional disturbance is not sufficient to constitute a defense to the crime (KRS 532.025(2)(b)(2));

3) At the time of the offense the defendant acted under duress or under the domination of another person (KRS 532.025(2)(b)(6));

4) At the time of the offense the capacity of the defendant to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication (KRS 532.025(2)(b)(7));

5) The psychiatric and psychological makeup, emotional maturity, and rehabilitative potential of the defendant (KRS 532.025);

6) What evidence exists to show that Frank could not make a knowing and intelligent waiver of his right to an attorney and his right not to incrimination prior to the questioning he underwent by Sheriff Hill that resulted in two incriminating statements.

7) What evidence exists to support the possibility that Frank was not involved in this crime at all, but has admitted involvement for some other reason, i.e. being important or was duped into admitting involvement.

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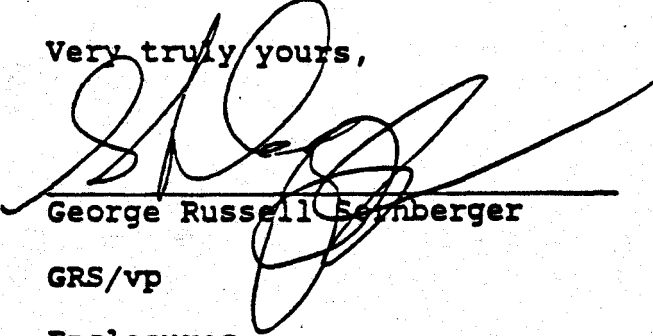
I have enclosed a copy of the NOTICE UNDER K.R.S. 31.185 that I have filed with the Court in order to inform the Judge and the prosecutor about this request for evaluation of evidence.

The information previously sent for consideration includes:

- a) 1 Page Statement (February 17th, 1989)
- b) 2 Page Statement (February 18th, 1989)
- c) Grand Jury Transcript
- d) Response to Motions for Bill of Particulars
- e) Life History of Frank Simpson, Jr.
- f) Transcript from Evidentiary Hearing on Bond
- g) Secondary School Record-Transcript
- h) Results and Rankings of his ctbs test
- i) Additional School Records
- j) Hospital Records Concerning a Head Injury

Please let me know if additional information is required before you can complete this request. Thank you for your assistance.

Very truly yours,



George Russell Bernberger

GRS/vp

Enclosures